



Attorney Docket No. 5670-33

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Yeh et al.

Confirmation No.: 2981

Application Serial No.: 10/725,043

Group Art Unit: 2131

Filed: December 1, 2003

For: METHODS, SYSTEMS AND COMPUTER PROGRAM PRODUCTS FOR  
AUTOMATIC REKEYING IN AN AUTHENTICATION ENVIRONMENT

Date: July 16, 2004

Mail Stop Missing Parts  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. §1.47(a) TO ACCEPT FILING OF APPLICATION  
WHERE AN INVENTOR REFUSES TO SIGN OR CANNOT BE REACHED**

07/20/2004 HLE333 00000080 10725043

03 FC:1460 130.00 OP  
Sir:

Applicants Haili Ma and Samuel Kim hereby petition under 37 C.F.R. 1.47(a) to accept the filing of the application without the signature of inventor Ryhwei Yeh as Mr. Yeh has refused to sign the Declaration for the present application. In support of this petition, Applicants provide the following:

1. The Affidavit of Agnes Kim (with attachments) setting forth the facts and circumstances regarding Mr. Yeh's refusal to join the present application.
2. The Declaration under 37 C.F.R. § 1.63 of Inventors Haili Ma and Samuel Kim.
3. A Petition for Extension of Time
4. A copy of the form entitled "Notice to File Missing Parts of Nonprovisional Application."

The last known address of Mr. Ryhwei Yeh is:

Mr. Ryhwei Yeh  
915 Piers Ct.  
Palo Alto, CA 94303

In light of the above, Applicants request acceptance of the filing of the present application without the signature of Mr. Yeh.

Fees due:

Checks in the amount of \$680 are enclosed to cover the fees due. These fees include the surcharge of \$130.00 for late filing of an Oath or Declaration under 37 C.F.R. § 1.16(e),

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the petition fee of \$130.00 as the set forth in 37 C.F.R. §1.47(a) and 37 C.F.R. § 1.17(h) and the two month extension of time fee of \$420.00 as set forth in 37 C.F.R. 1.17(a)(2).

It is not believed that an extension of time and/or additional fee(s) are required, beyond those that may otherwise be provided for in documents accompanying this paper. In the event, however, that an extension of time is necessary to allow consideration of this paper, such an extension is hereby petitioned under 37 C.F.R. §1.136(a). Any additional fees believed to be due in connection with this paper are hereby authorized to be charged to Deposit Account No. 50-0220.

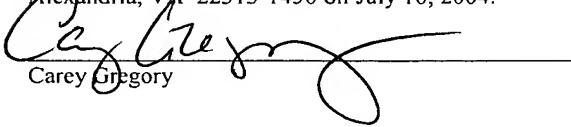
Respectfully submitted,

  
Timothy J. O'Sullivan  
Registration No. 35,632

Myers Bigel Sibley & Sajovec, P.A.  
P. O. Box 37428  
Raleigh, North Carolina 27627  
Telephone: (919) 854-1400  
Facsimile: (919) 854-1401  
Customer No. 20792

**Certificate of Mailing under 37 CFR § 1.8**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 16, 2004.

  
Carey Gregory

JUL 19 2004

Attorney Docket No. 5670-33

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Yeh et al.

Confirmation No.: 2981

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For: METHODS, SYSTEMS AND COMPUTER PROGRAM PRODUCTS FOR  
AUTOMATIC REKEYING IN AN AUTHENTICATION ENVIRONMENT

Mail Stop Missing Parts  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**AFFIDAVIT OF AGNES KIM  
IN SUPPORT OF A PETITION UNDER 37 C.F.R. 1.47(A)**

Sir:

I, Agnes Kim, do declare and say as follows:

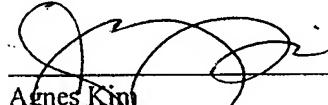
1. I am employed as Corporate Counsel for NetIQ Corporation.
2. At the time of filing of the above application, Ryhweh Yeh was employed by NetIQ Corporation. A copy of Mr. Yeh's employment agreement is attached hereto at Tab A.
3. In May and June of 2004, I exchanged e-mails and voice messages with Mr. Yeh in an effort to obtain Mr. Yeh's signature for the Declaration and Assignment in the above-referenced application. Examples of the e-mails are attached hereto at Tab B.
4. On June 23, 2004, I sent a letter to Mr. Yeh via Federal Express requesting that Mr. Yeh execute the Declaration for the present application. Included with this letter was a copy of the application as filed. A copy of the letter without enclosures is attached hereto at Tab C.
5. I received a letter from Mr. Yeh dated July 3, 2004, indicating that he was refusing to sign the Declaration for the present application. A copy of the letter is attached hereto at Tab D.

In re: Yeh et al.  
Application Serial No.: 10/725,043  
Filed: December 1, 2003  
Page 2 of 2

6. Mr. Yeh's last known address is:

Mr. Ryhwei Yeh  
915 Piers Ct.  
Palo Alto, CA 94303

7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Agnes Kim  
Corporate Counsel  
NetIQ Corporation  
3353 North First Street  
San Jose, CA 95134

7/15/2004  
Date



## NETIQ CORPORATION

### **EMPLOYMENT, CONFIDENTIAL INFORMATION AND INVENTION ASSIGNMENT AGREEMENT**

As a condition of my employment with NETIQ CORPORATION, its subsidiaries, affiliates, successors or assigns (together, the "Company"), and in consideration of my employment with the Company and my receipt of the compensation hereafter paid to me by the Company, I agree to the following:

1. **Training Period; At-Will Employment**. I understand that for a period of one month from my initial start date, the Company has agreed that I will receive Confidential Information, specialized training and knowledge concerning the Company's business, customers, products and operations (the "Training Period"). The Company has agreed to provide me Confidential Information also from time to time subsequent to my Training Period. I understand that the Company has agreed that, during such Training Period, I may not be terminated other than for legal "Cause" without two weeks prior written notice or severance pay in lieu of such two-weeks notice. I also understand that, during such Training Period, I will be on a probationary status. At the end of the Training Period, I understand and agree that my employment with the Company is for an unspecified duration and constitutes "at-will" employment. After the Training Period, I agree that this employment relationship may be terminated at any time, with or without good cause or for any or no cause, at the option either of the Company or myself, with or without notice.

2. **Confidential Information**.

(a) **Company Information**. I agree at all times during the term of my employment and thereafter to hold in strictest confidence, and not to use, except for the benefit of the Company, or to disclose to any person, firm or corporation without written authorization of the Board of Directors of the Company, any Confidential Information of the Company. I understand that "Confidential Information" as used in paragraph 1 above and hereafter means any Company proprietary information, technical data, financial information, trade secrets or know-how, including, but not limited to, research, product plans, products, services, customer lists and customers (including, but not limited to, customers of the Company on whom I called or with whom I became acquainted during the term of my employment), markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed to me by the Company either directly or indirectly in writing, orally or by drawings or observation of parts or equipment.

I agree that all records in any form of the Company, whether Confidential Information or non-confidential information, relating in anyway to the Company, its business, its customers, and/or its potential customers that I prepare, develop, obtain or receive during my employment with the Company (referred to hereinafter collectively as "Company Records") are the sole property of the Company, its successors or assigns. Upon termination of my employment, I agree to deliver to the Company, its successors or assigns (and will not keep in my possession, recreate or deliver to anyone else) all Company Records.

(b) **Former Employer Information**. I agree that I will not, during my employment with the Company, improperly use or disclose any proprietary information or trade secrets of any former employer or other person or entity and that I will not bring onto the premises of the Company any unpublished document or proprietary information belonging to any such employer, person or entity unless consented to in writing by such employer, person or entity.

(c) **Third Party Information**. I recognize that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out my work for the Company consistent with the Company's agreement with such third party.

3. **Inventions**.

(a) **Inventions Retained and Licensed**. I have attached hereto, as Exhibit A, a list describing all inventions, original works of authorship, developments, improvements, and trade secrets which were made by me prior to my employment with the Company (collectively referred to as "Prior Inventions"), which belong to me, which relate to the Company's proposed business, products or research and development, and which are not assigned to the Company hereunder; or, if no such list is attached, I represent that there are no such Prior Inventions. If in the course of my employment with the Company, I incorporate into a Company product, process or machine a Prior Invention owned by me or in which I have an interest, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license to make, have made, modify, use and sell such

Prior Invention as part of or in connection with such product, process or machine.

(b) Assignment of Inventions. I agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby assign to the Company, or its designee, all my right, title, and interest in and to any and all inventions, original works of authorship, developments, concepts, improvements or trade secrets, whether or not patentable or registrable under copyright or similar laws, which I may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period of time I am in the employ of the Company (collectively referred to as "Inventions"), except as provided in Section 3(f) below. I further acknowledge that all original works of authorship which are made by me (solely or jointly with others) within the scope of and during the period of my employment with the Company and which are protectible by copyright are "works made for hire," as that term is defined in the United States Copyright Act.

(c) Inventions Assigned to the United States. I agree to assign to the United States government all my right, title, and interest in and to any and all Inventions whenever such full title is required to be in the United States by a contract between the Company and the United States or any of its agencies.

(d) Maintenance of Records. I agree to keep and maintain adequate and current written records of all Inventions made by me (solely or jointly with others) during the term of my employment with the Company. The records will be in the form of notes, sketches, drawings, and any other format that may be specified by the Company. The records will be available to and remain the sole property of the Company at all times.

(e) Patent and Copyright Registrations. I agree to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in the Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns, and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. I further agree that my obligation to execute or cause to be executed, when it is in my power to do so, any such instrument or papers shall continue after the termination of this Agreement. If the Company is unable because of my mental or physical incapacity or for any other reason to secure my signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering Inventions or original works of authorship assigned to the Company as above, then I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney in fact, to act for and in my behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by me.

(f) Exception to Assignments. I understand that the provisions of this Agreement requiring assignment of Inventions to the Company do not apply to any invention which qualifies fully under the provisions of California Labor Code Section 2870 (attached hereto as Exhibit B). I will advise the Company promptly in writing of any inventions that I believe meet the criteria in California Labor Code Section 2870 and not otherwise disclosed on Exhibit A.

4. Conflicting Employment. I agree that, during the term of my employment with the Company, I will not engage in any other employment, occupation, consulting or other business activity directly related to the business in which the Company is now involved or becomes involved during the term of my employment, nor will I engage in any other activities that conflict with my obligations to the Company.

5. Non-Compete Covenant. As a condition to, and in consideration of, the Company's covenants contained in Section 1 hereof, including, without limitation, giving me confidential and proprietary information, special training and knowledge concerning the Company's business, customers, products and other Confidential Information, which I recognize as being valuable to the Company and, therefore, its protection and maintenance constitutes a legitimate interest to be protected by the provisions of this Section 5 as applied to me and all other similarly-situated employees of the Company, I hereby agree that:

(a) For "a reasonable period of time" after termination of this Agreement and within "a reasonable territory" (both as defined in paragraph (b) below, I will not for any reason, directly or indirectly, by any means or device, for my self or on behalf of or in conjunction with any person, partnership or corporation (i) compete with the Company in the development and marketing of systems management software products which manage distributed client/server networks operating on Microsoft Windows NT and Windows 2000 environments, (ii) solicit any customers of the Company to purchase the products or services which, as of the date of such termination, would compete, directly or indirectly, with those which were offered by the Company or were reasonably foreseeable to be offered by the Company during such period of time or (iii) work on or develop, directly or indirectly, for any competitor of the Company any programs or software similar to those upon which I worked or assisted during my employment

with the Company. I understand and agree that the aforementioned period of time specified in this paragraph will not run during any period when I am committing any act prohibited by this Agreement.

(b) As used in this Agreement, "a reasonable period of time" means one year, unless otherwise extended pursuant to the terms hereof. I hereby acknowledge and agree that if I violate the covenants set forth in paragraph (a) above, and the Company brings legal action for injunctive or other relief, the Company shall not be deprived of the benefit of the full reasonable period of time. Accordingly, the covenants set forth in the preceding paragraph shall be deemed to have a one-year duration, with such period commencing upon the later of (i) the termination of my employment with the Company and (ii) the date of entry by a court of competent jurisdiction of a final judgment enforcing the covenants contained in paragraph (a) above. I hereby acknowledge and agree that as used in this Agreement, "a reasonable territory", in view of the international nature of the markets in which the Company operates, means the United States of America and any foreign market in which the Company's products are sold during the term of this Agreement.

(c) The covenants set forth in paragraph (a) above will accrue to the benefit of the Company, regardless of the reason for termination of this Agreement.

(d) I hereby acknowledge that the obligations of this Agreement are directly related to the promises of the Company set forth in Section 1 above and are necessary to protect the Company's legitimate business interests. I acknowledge that the Company's need for the covenants set forth in this Agreement is based on the following: (i) the substantial time, money and effort expended and to be expended by the Company in developing technical designs, computer program source codes, marketing plans and similar confidential information; (ii) the fact that I will be personally entrusted with the Company's confidential and proprietary information; (iii) the fact that, after having access to the Company's technology and other confidential information, I could become a competitor of the Company; and (iv) the highly competitive nature of the Company's industry, including the premium that competitors of the Company place on acquiring proprietary and competitive information.

(e) Notwithstanding the foregoing, I understand that I may acquire an ownership interest, directly or indirectly, of not more than 5% of the outstanding securities of any corporation which is engaged in a business competitive with the Company and which is listed on any recognized securities exchange or traded in the over the counter market in the United States; provided, that such investment is of a totally passive nature and does not involve me devoting my time to the management or operations of such corporation.

6. Solicitation of Employees. As a condition to, and in consideration of, the Company's covenants contained in Section 1 hereof, including, without limitation, giving me confidential and proprietary information, special training and knowledge concerning the Company's business, customers, products and other Confidential Information, which I recognize as being valuable to the Company and, therefore, its protection and maintenance constitutes a legitimate interest to be protected by the provisions of this Section 5 as applied to me and all other similarly-situated employees of the Company, I hereby agree that: for a period of twelve (12) months immediately following the termination of my relationship with the Company for any reason, whether with or without cause, I shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or take away employees of the Company, either for myself or for any other person or entity. For each such employee that leaves their employment with the Company as a result of my breach of this covenant, I agree that the Company shall be entitled to recover from me an amount equal to twenty percent (20%) of the annual salary of any such employee as liquidated damages for each such breach of this Section 6. I agree that this liquidated damages paragraph does not limit the Company's remedies against me for my breach(es) of this Agreement.

#### 7. General Provisions.

(a) Governing Law; Consent to Personal Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California, irrespective of the conflict of laws rules; provided, however, that the application of California law to this Agreement shall not act as a means to add to or increase the statutory or administrative rights granted to employees in the state of my residence in the event that I seek enforcement of such statutory or administrative rights against the Company. In such event, the arbitrator or presiding official shall apply only the statutory and administrative laws of the state of my residence in determining any remedies permitted under such statutes or administrative rules. I hereby expressly consent to the personal jurisdiction of the state and federal courts located in California for any lawsuit filed there against me by the Company arising from or relating to: this Agreement, my employment with the Company, the termination of my employment with the Company, and/or any health, welfare or benefit plans affiliated with my employment with the Company.

(b) Arbitration. I hereby agree that if I disagree with the Company with respect to whether I or the Company have breached any of the terms or conditions of this Agreement, or if either I or the Company have a controversy, claim, or dispute against the other arising out of or related to: the Agreement, my employment with the Company, termination of employment

with the Company, the breach of any term or condition of my employment with the Company, and/or any health, welfare or benefit plans affiliated with my employment with the Company, that the disagreement shall be settled exclusively by binding arbitration in accordance with the Federal Arbitration Act and with the applicable rules and procedures of the American Arbitration Association. Judicial proceedings may be commenced only to force arbitration or to enforce the results of arbitration; provided that such prohibition shall not apply in the event that a court-ordered injunction is an appropriate remedy for a breach of my obligation of confidentiality or for an infringement by me of the intellectual property rights of the Company. No arbitration shall commence later than twenty-five (25) days before the expiration of the applicable statute of limitations. The arbitration shall be held in San Jose, California, unless mutually agreed otherwise, before one arbitrator licensed to practice law in the State of California selected in accordance with the Commercial Rules of the American Arbitration Association. Each party shall bear its own expense of arbitration. The arbitrator may award pre-award interest but shall not award punitive damages. The parties will cooperate in good faith to begin the final arbitration hearing within 60 days after an arbitration claim is filed, or as soon thereafter as practicable.

(c) Entire Agreement. This NetIQ Corporation Employment, Confidential Information and Inventions Assignment Agreement ("Agreement") sets forth the entire agreement and understanding between the Company and me relating to the subject matter herein and merges all prior discussions between us. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

(d) Waiver. The failure of a party to enforce any term, provision, or condition of the Agreement at any time or times shall not be deemed a waiver of that term, provision, or condition for the future, nor shall any specific waiver of a term, provision, or condition at one time be deemed a waiver of such term, provision, or condition for any future term or times.

(e) Severability. If one or more of the provisions in this Agreement are deemed void by law, then the remaining provisions will continue in full force and effect.

(f) Successors and Assigns. This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, its successors, and its assigns.

NETIQ CORPORATION

By: May Thang  
Name: May Thang  
Title: HR Rep  
Date: 11/16/01

Ryhwei Yeh  
Employee Signature  
Print Name  
Date: 11/16/01

Attest

EXHIBIT A

**LIST OF PRIOR INVENTIONS  
AND ORIGINAL WORKS OF AUTHORSHIP**

<u>Title</u>	<u>Date</u>	<u>Identifying Number or Brief Description</u>
Distributed Transaction Processing System	5/4/2001	U.S Patent Application Serial No. 09/859,521

No inventions or improvements  
 Additional Sheets Attached

Employee Signature: Ryhwei Yeh

Print Name: Ryhwei Yeh

Date: 11/16/01

EXHIBIT B

**CALIFORNIA LABOR CODE SECTION 2870  
EMPLOYMENT AGREEMENTS; ASSIGNMENT OF RIGHTS**

"(b) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer.

(2) Result from any work performed by the employee for the employer.

(c) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

# HICKMAN PALERMO TRUONG & BECKER LLP

*INTELLECTUAL PROPERTY LAW*

1600 WILLOW STREET • SAN JOSE • CALIFORNIA • 95125-5106  
TELEPHONE (408) 414-1080

FACSIMILE (408) 414-1076

June 25, 2001

Lakshmi Narasimha Ankireddipally  
1063 Morse Avenue #4203  
Sunnyvale, California 94089

Ryh-Wei Yeh  
915 Piers Court  
Palo Alto, California 94303

Dan Nichols  
570 South Frances Street  
Sunnyvale, California 94086

Ravi Devesetti  
1235 Wildwood Avenue #267  
Sunnyvale, California 94089

Re: U.S. Patent Application Serial No. 09/850,521, Filed May 4, 2001  
Entitled: "*DISTRIBUTED TRANSACTION PROCESSING SYSTEM*"  
Inventor(s): Lakshmi Narasimha Ankireddipally, et al.  
Your Ref: P5046NP  
Our Ref: 15437-0538

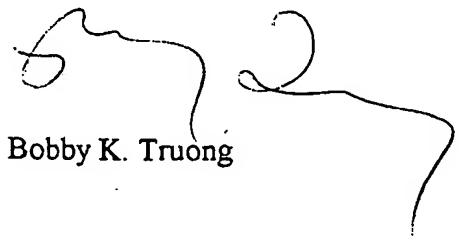
Gentlemen:

Thank you for your prompt response to our letter of May 18, 2001, wherein we requested your signatures on formal documents. Unfortunately, due to clerical error we forwarded the incorrect Assignment for execution. Enclosed is a new Assignment from you to Netscape Communications Corporation. Please execute the same and return it to our office in the self-addressed stamped envelope provided. Once we receive the executed Assignment, we will proceed to file them with the U.S. Patent and Trademark Office.

We appreciate your immediate attention in expediting this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

HICKMAN PALERMO TRUONG & BECKER, LLP

  
Bobby K. Truong

BKT/aj

Encls: as above w/ SASE



**From:** Ryhwei Yeh [ryhwei@yahoo.com]  
**Sent:** Friday, May 14, 2004 5:34 PM  
**To:** Agnes Kim  
**Subject:** RE: Patent document

Hi Agnes,

Your explanation is all reasonable, I will read again the employment agreement that I signed. I think I can stop by on Monday afternoon, if nothing concerns me. Please let me know when is a good time - perhaps between 1:30 to 2:00 pm?

Ryhwei

-----Original Message-----

From: Agnes Kim [mailto:agnes.kim@netiq.com]  
Sent: Friday, May 14, 2004 1:25 PM  
To: 'Ryhwei Yeh'  
Subject: RE: Patent document

Hi Ryhwei,

This document is important for NetIQ to secure our rights in the patent. You are correct in that your employment agreement has a provision (section 3b) requiring an employee to assign any inventions developed during the time of employment to NetIQ. Your employment agreement also contains a provision (section 3e) which states as follows:

"I agree to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in the Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all application, specification, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive rights, title and interest in and to such inventions, and any copyrights, patents, mask work right or other intellectual property rights relating thereto. I further agree that my obligation to execute or cause to be executed, when it is in my power to do so, any such instruments or papers shall continue after the termination of this Agreement."

The assignment and declaration documents are two documents that the United States Patent and Trademark Office require be signed in order for NetIQ to secure the rights in the patent. The declaration/power of attorney is a document which declares that you and the other two inventors are the inventors of the patent. This document also allows Myers Bigel, our patent attorneys, to prosecute and transact all business with the US Patent and Trademark Office in connection with the patent application.

The Assignment is a document whereby the inventors are formally assigning all patent rights and invention of the specific invention to NetIQ. By signing these documents, you are not giving to NetIQ any more rights than to which you have already agreed under your employment agreement. All employees of any company that have agreed to assign their inventions/patents to their employer have to sign an Assignment and a Declaration.

I apologize that this came up during your exit interview, but these documents were sent to me by our patent attorneys when you were on vacation. I was told that you were going to leave the company and that you would be coming back for an exit interview. We did not intentionally wait to ask you

to sign until your exit interview.

Ryhwei, our deadline to fax this to the USPTO is on Monday. If we don't have this to them on Monday, we will have to pay an extension fee but we will not lose any rights. Would it be possible for you to stop by on Monday to sign the documents and have them notarized?

If you have any questions regarding any provision in the document, please do not hesitate to contact me.

Thank you.

Agnes

-----Original Message-----

From: Ryhwei Yeh [mailto:[ryhwei@yahoo.com](mailto:ryhwei@yahoo.com)]  
Sent: Tuesday, May 11, 2004 4:53 PM  
To: Agnes Kim  
Subject: RE: Patent document

Hi Agnes,

I will be busy whole day Thursday. My biggest concern is that why I am required to sign the paper at the time I am leaving the company. What is the consequence, both me and the patent application, if without my signature? Is the company not able to proceed the patent filing process and assume that the company owns the IP right instead of me? I am happy just to be the inventor and believe an employment agreement that I have signed at the time of my joining the company already spells that out. Please understand that I am not trying to delay the process, but I just reluctant and nervous to sign a power attorney related agreement.

Regards,  
Ryhwei

--- Agnes Kim <[agnes.kim@netiq.com](mailto:agnes.kim@netiq.com)> wrote:  
> Hi Rhywei,  
>  
> Would it be possible for you to have the signed  
> document back to us by  
> Thursday, May 13th? Our deadline to file with the  
> USPTO without penalty is  
> Monday, May 17th. If you require more time, please  
> let me know and I will  
> contact our patent attorney to find out what the  
> consequences may be.  
>  
> Please do not hesitate to contact me if you have any  
> questions or concerns  
> about the documents.  
>  
> Thanks.

>  
> Agnes

>  
>

> -----Original Message-----

> From: Ryhwei Yeh [mailto:[ryhwei@yahoo.com](mailto:ryhwei@yahoo.com)]  
> Sent: Wednesday, May 05, 2004 1:53 PM  
> To: Agnes.Kim@netiq.com  
> Subject: Patent document  
>  
> Hi Agnes,

>  
> Sorry that I have not got back to you. I am still  
> reading the document, but have been busy these days.  
>  
> I am a bit concerned about the language in the  
> assignment document, but I am no lawyer and not sure  
> if my concern is legitimate or not. My question is  
> that if my signature delays any product delivery or  
> patent application process?  
>  
> Regards,  
> Ryhwei

**From:** Agnes Kim [agnes.kim@netiq.com]  
**Sent:** Wednesday, June 02, 2004 1:51 PM  
**To:** 'Ryhwei Yeh'  
**Subject:** RE: Patent document

Hi Ryhwei,

I received your vm msg. For some reason, my call log did not capture your phone number the day you called. As you referenced in your message, section 3(e) of the contract does include language that may allow NetIQ to continue the patent process for the patent application. However, continuing without your sign off on the declaration and assignment will be much more difficult.

I am not sure how I can ease your concerns. We would really appreciate your cooperation on this matter. Would you like to speak with Tim O'Sullivan, the patent attorney that you worked with during the application drafting process? He will be available to answer any of your questions or concerns. I can provide you his contact information. Please let me know.

Thank you.

Agnes

-----Original Message-----

**From:** Agnes Kim  
**Sent:** Friday, May 14, 2004 1:25 PM  
**To:** 'Ryhwei Yeh'  
**Subject:** RE: Patent document

Hi Ryhwei,

This document is important for NetIQ to secure our rights in the patent. You are correct in that your employment agreement has a provision (section 3b) requiring an employee to assign any inventions developed during the time of employment to NetIQ. Your employment agreement also contains a provision (section 3e) which states as follows:

"I agree to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in the Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all application, specification, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive rights, title and interest in and to such inventions, and any copyrights, patents, mask work right or other intellectual property rights relating thereto. I further agree that my obligation to execute or cause to be executed, when it is in my power to do so, any such instruments or papers shall continue after the termination of this Agreement."

The assignment and declaration documents are two documents that the United States Patent and Trademark Office require be signed in order for NetIQ to secure the rights in the patent. The declaration/power of attorney is a document which declares that you and the other two inventors are the inventors of the patent. This document also allows Myers Bigel, our patent attorneys, to prosecute and transact all business with the US Patent and Trademark Office in connection with the patent application.

The Assignment is a document whereby the inventors are formally assigning

all patent rights and invention of the specific invention to NetIQ. By signing these documents, you are not giving to NetIQ any more rights than to which you have already agreed under your employment agreement. All employees of any company that have agreed to assign their inventions/patents to their employer have to sign an Assignment and a Declaration.

I apologize that this came up during your exit interview, but these documents were sent to me by our patent attorneys when you were on vacation. I was told that you were going to leave the company and that you would be coming back for an exit interview. We did not intentionally wait to ask you to sign until your exit interview.

Ryhwei, our deadline to fax this to the USPTO is on Monday. If we don't have this to them on Monday, we will have to pay an extension fee but we will not lose any rights. Would it be possible for you to stop by on Monday to sign the documents and have them notarized?

If you have any questions regarding any provision in the document, please do not hesitate to contact me.

Thank you.

Agnes

-----Original Message-----

From: Ryhwei Yeh [mailto:[ryhwei@yahoo.com](mailto:ryhwei@yahoo.com)]  
Sent: Tuesday, May 11, 2004 4:53 PM  
To: Agnes Kim  
Subject: RE: Patent document

Hi Agnes,

I will be busy whole day Thursday. My biggest concern is that why I am required to sign the paper at the time I am leaving the company. What is the consequence, both me and the patent application, if without my signature? Is the company not able to proceed the patent filing process and assume that the company owns the IP right instead of me? I am happy just to be the inventor and believe an employment agreement that I have signed at the time of my joining the company already spells that out. Please understand that I am not trying to delay the process, but I just reluctant and nervous to sign a power attorney related agreement.

Regards,  
Ryhwei

--- Agnes Kim <[agnes.kim@netiq.com](mailto:agnes.kim@netiq.com)> wrote:  
> Hi Rhywei,  
>  
> Would it be possible for you to have the signed  
> document back to us by  
> Thursday, May 13th? Our deadline to file with the  
> USPTO without penalty is  
> Monday, May 17th. If you require more time, please  
> let me know and I will  
> contact our patent attorney to find out what the  
> consequences may be.  
>  
> Please do not hesitate to contact me if you have any  
> questions or concerns  
> about the documents.  
>  
> Thanks.  
>

> Agnes  
>  
>  
> -----Original Message-----  
> From: Ryhwei Yeh [mailto:ryhwei@yahoo.com]  
> Sent: Wednesday, May 05, 2004 1:53 PM  
> To: Agnes.Kim@netiq.com  
> Subject: Patent document  
>  
> Hi Agnes,  
>  
> Sorry that I have not got back to you. I am still  
> reading the document, but have been busy these days.  
>  
> I am a bit concerned about the language in the  
> assignment document, but I am no lawyer and not sure  
> if my concern is legitimate or not. My question is  
> that if my signature delays any product delivery or  
> patent application process?  
>  
> Regards,  
> Ryhwei



June 23, 2004

BEST AVAILABLE COPY

FEDERAL EXPRESS

Ryhwei Yeh  
915 Piers Ct.  
Palo Alto, CA 94303

Re: Patent Application for Methods, Systems and Computer Program Products for Automatic Rekeying in an Authentication Environment

Dear Ryhwei:

Please find enclosed the following documents for the above referenced patent application for your review and signature:

- Declaration and Power of Attorney for Patent Application (with copy of patent application and drawing)
- Assignment (this document requires notarization)
- PCT Power of Attorney

As you know, NetIQ received a Notice to File Missing Parts from the United States Patent and Trademark Office for the above referenced patent application. In order for NetIQ to complete the filing of this patent application, NetIQ is required to obtain signatures on a Declaration and Power of Attorney and an Assignment from each inventor of this patent. Additionally, NetIQ is required to obtain a signature on the PCT Power of Attorney from each inventor so that NetIQ may file applications for the above referenced patent in foreign jurisdictions should NetIQ so choose.

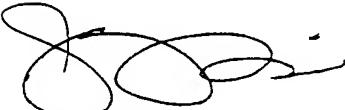
As you may recall, Section 3(e) of the Employment, Confidential Information and Invention Assignment Agreement (the "Employment Agreement"), which you accepted on November 16, 2001, provides that your obligation to execute any documents to enable NetIQ to secure its rights in any patents continues after the termination of your Employment Agreement. As such, I trust that you will fulfill this obligation. However, should you continue to refuse to sign the enclosed documents, NetIQ shall exercise its rights under Section 3(e) of the Employment Agreement which provides that NetIQ may act on your behalf to file and prosecute any patents if NetIQ is unable to secure your signature. I have enclosed a copy of your Employment Agreement for your review and reference.

Please provide a signed copy of the enclosed documents to me on or before July 9, 2004. Should NetIQ fail to receive a signed copy of the documents by this date, NetIQ will proceed with filing and prosecuting this patent in the United States and other jurisdictions as provided in the Employment Agreement. I have enclosed a pre-stamped envelope for your convenience.

Please do not hesitate to contact me with any questions or concerns that you may have.

Thank you.

Sincerely,



Agnes Kim  
Corporate Counsel  
NetIQ Corporation  
3553 North First Street  
San Jose, CA 95134  
direct: 408.856.3109

BEST AVAILABLE COPY

Enclosures



July 3, 2004

Agnes Kim  
3553 North First Street  
San Jose, CA 95134

Re. Patent Application for Methods, Systems, and Computer Program Products for  
Automatic Rekeying in an Authentication Environment

Dear Agnes,

I am writing this letter in response to your letter dated June 23, 2004.

In Section 3(e) of the Employment, Confidential Information and Invention Assignment (the "Employment Agreement"), it is stated "I further agree that my obligation to execute or cause to be executed, **when it is in my power to do so**, any such instrument or papers shall continue after the termination of this agreement."

To fulfill my obligation, I took time to review the documents, exchanged emails with you in a timely fashion, provided my personal phone number, and informed you about my concerns and decision promptly. I did not wish to delay or obstruct the patent application process and therefore have provided my earnest effort.

I had informed you about my concern of the content in the documents for me to sign and my decision not to sign them. After further review of the documents per your request in the June 23 letter, I am still not able to fully understand and agree the incurred legal obligations as stated in the documents. I am convinced it is **not in my power** to sign the documents as requested.

In addition, I wish to respond specifically to a couple of statements in your letter:

1. 2<sup>nd</sup> paragraph – "As you know, NetIQ received a Notice to File Missing Parts ..." In fact, I did not know about that. I had been asked to sign the documents for the purpose of patent application. I was under the impression that the patent application had been filed long ago.
2. 3<sup>rd</sup> paragraph – "I have enclosed a copy of your Employment Agreement for your review and reference" The Employment Agreement was not enclosed. I did not receive it separately either.

Sincerely,

Ryhwei Yeh